JUN 02 1997

DATE: June 1, 1997

TO: Rep. Brandemuehl

FROM: Mark Patronsky (266-9280)

SUBJECT: Navigability

Here is the navigability draft. I haven't had time to prepare a memo to describe it, so here are a few notes, and if the draft suits your purposes, I can do a memo later.

There are many possible ways to draft something like this. I chose one that seems to work, and is fairly broad in its scope, which is what I think you want. Let me know if you'd like to try a different approach.

SECTION 2 of the draft requires DNR to issue a permit for a structure or deposit in navigable water if the 4 conditions of the draft are met.

I didn't include provisions for the other DNR permits under ch. 30 (such as grading stream banks, irrigation or changing stream courses) because those already have agriculture-specific exemptions.

SECTIONS 3 and 4 of the draft exempts land that meets the specified conditions from shoreland zoning, construction site erosion control zoning, storm water management zoning and wetland zoning.

If the draft is OK, you should send it to LRB for drafting.

1	281.31 (2) (ag) "Agricultural use" has the meaning given under s. 91.01 (1).
2	SECTION 4. 281.31 (2r) of the statutes is created to read:
3	281.31 (2r) Notwithstanding any other provision of law or administrative rule, a
4	shoreland zoning ordinance required under s. 59.692, a construction site erosion control and
5	storm water management zoning ordinance authorized under s. 59.963, 60.627, 61.354 or
6	62.234 or a wetland zoning ordinance required under s. 61.351 or 62.231 does not apply to
7	lands adjacent to a stream if all of the following apply:
8	1. The lands are in agricultural use.
9	2. The portion of the stream adjacent to the lands is navigable in fact for less than the
0	entire time that the stream is ice-free in a year with average precipitation.
11	SECTION 5. Initial applicability.
2	(1) Section 30.12 (2) (b) of the statutes, as created by this act, first applies to structures
3 tw.:	or deposits proposed to be placed in a stream after the effective date of this subsection.
	(END)

1	AN ACT to renumber and amend 30.12 (2); and to create 30.12 (2) (b), 281.31 (2)
2	(ag) and 281.31 (2r) of the statutes; relating to: the applicability of certain
3	regulations to streams adjacent to land in agricultural use.
	The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
4	SECTION 1. 30.12 (2) of the statutes is renumbered 30.12 (2) (a) and amended to read:
5	30.12 (2) (a) The department, upon application and after proceeding in accordance with
6	s. 30.02 (3) and (4), may grant to any riparian owner a permit to build or maintain for the
7	owner's use a structure otherwise prohibited under sub. (1), if the structure does not materially
8	obstruct navigation or reduce the effective flood flow capacity of a stream and is not
9	detrimental to the public interest. The procedures in this subsection paragraph do not apply
10	to permits issued under sub. (3). SECTION 2. 30.12 (2) (b) of the statutes is created to read:
11	30.12 (2) (b) Notwithstanding the conditions for issuance of a permit under par. (a), the
12	department shall issue the permit if all of the following apply:
13	1. The application relates to riparian land that is in agricultural use, as defined in s. 91.01
14	
15	(1).
16	2. The application relates to material or a structure placed in a stream.
17	3. The material or structure proposed to be placed in the stream relates to the agricultural
18	use of the land.
19	4. The portion of the stream adjacent to the riparian land is navigable in fact for less than
20	the entire time that the stream is ice—free in a year with average precipitation.
21	SECTION 3. 281.31 (2) (ag) of the statutes is created to read:

WLCS: 0394/1

MCP:wu;ksm

6/2/97

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11	SECTION 5. Initial applicability.
12	(1) Section 30.12 (2) (b) of the statutes, as created by this act, first applies to structures
13	or deposits proposed to be placed in a stream after the effective date of this subsection.
14	(END)

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